

CITY AND COUNTY OF SAN FRANCISCO

Audit Report

RESTITUTION FINES AND COURT-ORDERED RESTITUTION

July 1, 2001, through June 30, 2002



STEVE WESTLY
California State Controller

February 2004



STEVE WESTLY
California State Controller

February 25, 2004

The Honorable Edward Harrington
Auditor-Controller
City and County of San Francisco
1 Dr. Carlton B. Goodlett Place, Room 316
San Francisco, CA 94102-4694

Mr. Neal Taniguchi
Court Executive Officer
Superior Court
400 McAllister Street, Room 205
San Francisco, CA 94102-4694

Dear Mr. Harrington and Mr. Taniguchi:

The State Controller's Office has completed an audit to determine the propriety of court restitution fines reported to the State of California and court-ordered restitution reported to the Victim Compensation and Government Claims Board by the City and County of San Francisco for the period of July 1, 2001, through June 30, 2002.

The audit disclosed that:

- The Adult Probation Department collected restitution fines but did not collect court-ordered restitution; and
- The courts did not include a 10% administration fee for restitution fines collected.

If you have any questions, please contact Jerry McClain, Chief, Special Audits Bureau, at (916) 323-1573.

Sincerely,

A handwritten signature in dark ink, reading "Vincent P. Brown". The signature is fluid and cursive.

VINCENT P. BROWN
Chief Operating Officer

VPB:jj/ams

cc: Kenny Hutton, Restitution Specialist
District Attorney's Office
Catherine Close, Executive Director
Victim Compensation and
Government Claims Board
Laura Hill, Manager
Revenue Recovery Division
Victim Compensation and
Government Claims Board

Contents

Audit Report

Summary	1
Background	1
Objective, Scope, and Methodology	2
Conclusion	3
Views of Responsible Officials	3
Restricted Use	3
Schedule 1—Random Sample Results	4
Findings and Recommendations	5
Appendix—Transaction Flow for Court-Ordered Restitution	8
Attachment A—Adult Probation Department’s Response to Draft Audit Report	
Attachment B—Court’s Response to Draft Audit Report	

Audit Report

Summary

The State Controller's Office (SCO) performed an audit to determine the propriety of court restitution fines reported to the State of California and court-ordered restitution reported to the Victim Compensation and Government Claims Board (Board) by the City and County of San Francisco for the period of July 1, 2001, through June 30, 2002. The last day of fieldwork was June 19, 2003.

The City and County of San Francisco remittances to the State Treasurer for restitution fines and warrants paid to the Board for restitution court orders were correct. The points discussed in the Findings and Recommendations section may affect the amount of those remittances through enhanced collection efforts or additional fees collected.

In addition, the reimbursement of court-ordered restitution is hindered due to various reasons. For example, pursuing reimbursement for claims that are remitted after the sentencing date may not be cost-effective due to the additional court costs involved, unless the courts and the county are willing to implement a coordinated process among the courts, the District Attorney's Office, and the Probation Department.

Background

State statutes govern the distribution of court revenues, which include restitution fines and court-ordered restitution. Whenever the State is entitled to a portion of such money, the court is required by *Government Code* Section 68101 to deposit the State's portion of court revenues with the county treasurer as soon as practical and to provide the county auditor with a monthly record of collections. This section further requires that the county auditor transmit the funds and a record of the money collected to the State Treasurer at least once a month.

Government Code Section 68103 requires that the State Controller determine whether or not all court collections remitted to the State Treasurer are complete. *Government Code* Section 68104 authorizes the State Controller to examine records maintained by any court. Furthermore, *Government Code* Section 12410 provides the State Controller with general audit authority to ensure that state funds are properly safeguarded.

The Board was concerned with the accurate and effective administration of restitution fines and court-ordered restitution with respect to the victim compensation program. Consequently, on January 1, 2003, an interagency agreement was made between the SCO and the Board to conduct six field audits of county and court collection systems as they relate to restitution fines and court-ordered restitution.

Objective, Scope, and Methodology

In accordance with the terms of the agreement, the objective of this audit was to determine whether the city and county and the courts completely and accurately remitted Board court-ordered restitution and restitution fines in a timely manner to the State Treasurer for the period of July 1, 2001, thorough June 30, 2002.

Pursuant to the interagency agreement, the SCO conducted a field audit of the San Francisco County Superior Court and collections entities to assess whether:

- The courts have properly ordered restitution fines and orders in accordance with *Penal Code* Section 1202.4; and
- The policies and procedures established by the courts and the county collection entities ensure that financial assistance made by the Board in accordance with *Government Code* Sections 13959 through 13969 was properly collected and reimbursed to the Restitution Fund.

In order to meet the objectives, the auditors reviewed the revenue processing systems within the city and county's Superior Court, Probation Department, District Attorney's Office, and Auditor-Controller's Office.

The auditors performed the following procedures:

- Reviewed the accuracy of distribution reports prepared by the city and county, which show court revenue distributions to the State, the county, and cities located within the county;
- Gained an understanding of the city and county's revenue collection and reporting processes by interviewing key personnel and reviewing documents supporting the transaction flow (Appendix);
- Analyzed the restitution accounts reported in the city and county's monthly cash statement for unusual variations and omissions;
- Performed tests to identify any incorrect distributions and expanded any test that revealed errors, to determine the extent of any incorrect distributions;
- Selected 50 cases from the Board's restitution schedule of accounts receivable to determine the timeliness and status of repayments (Schedule 1).

The audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. The SCO did not audit the county's financial statements. The auditors considered the county's management controls only to the extent necessary to plan the audit. This report relates to an examination of court-ordered restitution and restitution fines remitted and payable to the State of California. Therefore, the SCO does not express an opinion as to whether the city and county's court revenues, taken as a whole, are free from material misstatement.

Conclusion

The City and County of San Francisco restitution fines in the amount of \$134,182 remitted to the State through the TC-31 process for fiscal year 2001-02 were determined to be correct. The City and County of San Francisco did not report any direct reimbursement payments for court-ordered restitution to the Board during the fiscal year.

The Board remitted \$17,044 to the county under statutory rebate provisions during the fiscal year. These monies are intended to enhance the collection effort related to restitution fines and orders. The county deposited the rebate into the county's Probation Department fund for collection activities.

**Views of
Responsible
Officials**

The SCO issued a draft audit report on November 6, 2003. Daniel Lee, Finance Manager, Adult Probation Department, responded by e-mail dated December 10, 2003 (Attachment A), commenting upon the audit results. Gordon Park-Li, Chief Executive Officer, San Francisco Superior Court, responded by letter dated December 2, 2003 (Attachment B), agreeing with the audit results.

Restricted Use

This report is solely for the information and use of the City and County of San Francisco and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.



JEFFREY V. BROWNFIELD
Chief, Division of Audits

Schedule 1— Random Sample Results July 1, 2001, through June 30, 2002

A random sample of 50 cases was selected from the Victim Compensation and Government Claims Board's Schedule, VCP Paid Out vs. Restitution Ordered. These cases were analyzed in three ways: (1) destination of offender, (2) claim date, and (3) current collection effort. Each of these areas may have an impact on the accuracy and effectiveness of the court-ordered restitution collection process. From these cases, the following percentages were derived:

A. Destination of Offender

State:

State Correctional Facility	16%
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Local:

Formal Probation	52%
Juvenile	0%
No Record or Is Missing	32%

B. Claim Dates

Before Sentencing	20%
After Sentencing	56%
No Record	24%

C. Current Collection Effort*

No Further Action to Be Taken	32%
Continuing Effort	52%
Collection Satisfied or in Process (State)	16%
Collection Satisfied or in Process (Local)	0%

* Information provided by county staff.

Findings and Recommendations

FINDING 1— Restitution revenues not collected

The Adult Probation Department collected restitution fines but not restitution orders on behalf of the Board from July 1, 2001, through June 30, 2002. In addition, the District Attorney's Office and the Adult Probation Department are lacking in structure, resources, training, and accountability. Furthermore, it appears that the county has failed to use the state restitution rebate revenues to enhance the restitution fines and orders collection efforts.

The SCO auditor's interview with the staff failed to produce any supporting documentation, statistics, policies, and procedures concerning the collection of restitution fines and orders. It is apparent that the Adult Probation Department lacks the structure and resources to have a substantial impact on consistent collections of restitution fines and orders on behalf of the Board.

The District Attorney's Office staff indicates that the combined efforts of the departments in ordering, recording, and collecting restitution fines and orders are lacking in structure, resources, training, and accountability because they lack sufficient staff and resources to effectively process both restitution fines and orders on behalf of the Board.

Government Code Section 13963(f) requires the State to pay a rebate to the county probation department or county agency responsible for collection of funds owed to the Restitution Fund under *Government Code* Section 13967. In addition, the rebate shall be considered an incentive for collection efforts and shall be used for furthering these collection efforts. The county failed to distribute the state restitution rebate revenues to the Adult Probation Department and the District Attorney's Office to procure sufficient staff and resources to accomplish the intended collection enhancement meant for the rebate.

The *State Constitution*, Article I, Section 28, allows victims to receive restitution from wrongdoers for financial losses suffered as a result of criminal acts. "Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary."

In addition, *Penal Code* Section 1203.1(d), effective October 2002, provides a priority of order for time payment collections, and victim's restitution is to be collected first.

Failure to order, record, and collect restitution orders on behalf of the Board causes the fund to be understated. Consequently, the victim compensation program would become underfunded. The total amount paid out to victims by the Board as of July 2003 for San Francisco is \$1,670,000. During fiscal year 2001-02, the city and county did not collect and distribute any restitution orders to the Board.

Recommendation

The Superior Court, the Adult Probation Department, the District Attorney's Office, and the Board should develop collaborative efforts to aggressively approach the collection of restitution fines and orders on behalf of the Board. The collection efforts must be consistent throughout the offender's term of probation and enforcement of willful failure to pay cases should prevent an offender's probation from being terminated. Additionally, constant education and training is required for the Courts, the Adult Probation Department, and the District Attorney's Office.

The county should take steps to allocate the rebate revenues to the Adult Probation Department and the District Attorney's Office for collection of funds owed to the Restitution Fund.

In addition, the county should institute procedures to ensure that the funds are used to supplement the funding of current collection efforts and are not used to supplant existing funding sources. If the county does not intend to use the funds for the purpose for which they were received, the county should contact the Board and discuss returning the funds.

Adult Probation Department's Response

The department contacts victims through notification letters before sentencing of defendants. The letter provides details of the sentencing proceedings as well as the rights of victims to receive restitution. In many cases, responses to these letters are not returned to the department. For the responses received, many victims are not able to provide documentations for claiming expenses/pecuniary losses incurred as a direct result of the crime. Thus, restitution orders are not made.

The department recognizes the need to work for the needs of victims with other partners of the criminal justice system. Victims need to have a direct, meaningful voice in identifying the harms done by an offender and in identifying what should be done to address those harms. Victims should be able to move forward with their lives feeling their needs have been heard, respected, and significantly responded to and thus moving toward healing and closure

FINDING 2— Administration fees not charged

The City and County of San Francisco did not include a 10% administration fee on the restitution fines collected. The agency added an administration fee only on the restitution orders paid by the defendants. The fee was not implemented because the board of supervisors has not adopted a resolution to add the administration fee.

According to *Penal Code* Section 1202.4(I), the board of supervisors may impose a fee to cover the actual administrative cost of collecting the restitution fines, not to exceed 10% of the amount ordered to be paid. Additionally, *Penal Code* Section 1203.1(I) states that the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution orders, not to exceed 10% of the total amount ordered to be paid. These fees are to be deposited into the county General Fund for the use and benefit of the county.

Failure to establish the administration fee causes county resources to be understated and may lessen the enhancement effort to collect state restitution fines.

Recommendation

The city and county should take steps, after a board resolution, to levy the 10% administration fee for the collection of state restitution fines.

Adult Probation Department's Response

The department collected a 10% administrative fee on all felony cases ordered through the Superior Courts. When defendants are charged with law violations, the Adult Probation Department conducts criminal investigations and provides a report, which is known as the presentencing report, to guides the courts in its decisions on sentencing offenders. This report describes the circumstances surrounding felony offenses and provides a summary of any prior history. Through this process, the department is able to ensure that administrative fees are properly included in the court orders.

For non-felony or misdemeanor cases, presentencing reports are not required. As such, details of these cases are not provided to the department until the court orders are submitted for pursuing collections. Due to the limited quantity of cases received, the department does believe it is cost-effective to pursue claim because of the additional court steps required.

Appendix— Transaction Flow for Court-Ordered Restitution July 1, 2001, through June 30, 2002

The following narrative describes the court-ordered restitution process for the various entities in the City and County of San Francisco involved in court-ordered restitution.

District Attorney's Office

When a person is a victim of a crime documented in an official police report, he or she is entitled to apply for the Victim Compensation and Government Claims Board (VCB) assistance. To ensure that VCB restitution orders are imposed, the payment information must be presented in court at the time of the defendant's sentencing. The DA's office receives notification from VCB and a staff member enters the information into a database to link the claim with the defendant's file or docket. (At sentencing, the DA's office sometimes failed to inform the court and the Probation Department about the VCB claim.) When VCB claims are filed after the sentencing date, claims are much more difficult to file against the defendant because he or she must be brought back from prison into the court, which is usually not cost-effective.

San Francisco Superior Court

The court is responsible for disclosing fines and claims filed against the defendant. Upon sentencing, the court prepares a court order and a restitution order. If the defendant is sent to prison, the collection responsibility lies with the State Prison Authorities. If the defendant is placed on formal probation, the collection responsibility is with the county Probation Department but the notification was not sent during our audit period.

Probation Department

Each defendant is assigned a probation officer. If the defendant's file includes a VCB claim, the officer prepares a collection order. The Probation Department relies on the court and the District Attorney's Office to provide the necessary information to proceed with the collection process. The information on VCB claims was not received.

**Attachment A—
Adult Probation Department's Response
to Draft Audit Report**

Brummels, Greg

From: Daniel Lee [Daniel.Lee@sfgov.org]
Sent: Wednesday, December 10, 2003 4:14 PM
To: grbrummels@sco.ca.gov
Subject: Draft Audit Report - Restitution Fines and Fees for City and County of San Francisco



pic11960.jpg



scoaudit.DOT

Greg,

I got your voicemail today. The document below do not have any macros. However, I have cut a paste the document to the body of this email.

Dan

City and County of San Francisco

(Embedded image moved to file: pic11960.jpg)

ARMANDO CERVANTES
Chief Adult Probation Officer

(415) 553-1706 Fax: (415) 553-1771 1 880 Bryant Street,
Room 200 San Francisco, CA 94103-4673
Date: December 4, 2003

To: Ed Harrington,
Controller
City and County of San Francisco

Gordon Park-Li
Chief Executive Officer
San Francisco Superior Court

Neal Taniguchi
Chief Financial Officer
San Francisco Superior Court

Thru: Armando Cervantes,
Chief Adult Probation Officer

From: Daniel Lee
Finance Manager

Subject: Draft Audit Report from California State Controller

We are in receipt of the draft audit report dated November 6, 2003 from the California State Controller. Our response to the audit recommendations is as follows:

Findings: The Adult Probation Department collected restitution fines but

not restitution orders on behalf of the Board from July 1, 2001, through June 30, 2002. In addition, the Adult Probation Department are lacking in structure, resources, training, and accountability...

The Superior Court, Adult Probation Department, District Attorney's Office, and the Board should develop collaborative efforts to aggressively approach the collection of restitution fines and orders on behalf of the Board. The collection efforts must be consistent throughout the offender's term of probation and enforcement of willful failure to pay cases should prevent an offender's probation from being terminated.

Comments: The department contacts victims through notification letters before sentencing of defendants. The letter provides details of the sentencing proceedings as well as the rights of victims to receive restitution. In many cases, responses to these letters are not returned to the department. For the responses received, many victims are not able to provide documentations for claiming expenses/pecuniary losses incurred as a direct result of the crime. Thus, restitution orders are not made.

The department recognizes the need to work for the needs of victims with other partners of the criminal justice system. Victims need to have a direct, meaningful voice in identifying the harms done by an offender and in identifying what should be done to address those harms. Victims should be able to move forward with their lives feeling their needs have been heard, respected, and significantly responded to and thus moving toward healing and closure

Findings: The City and County of San Francisco did not include a 10% administrative fee on the restitution fines collected. The agency added an administrative fee only on the restitution orders paid by defendants. The fee was not implemented because the board of supervisors has not adopted a resolution to add the administrative fees.

Comments: The department collected a 10% administrative fee on all felony cases ordered through the Superior Courts. When defendants are charged with law violations, the Adult Probation Department conducts criminal investigations and provides a report, which is known as the presentencing report, to guides the courts in its decisions on sentencing offenders. This report describes the circumstances surrounding felony offenses and provides a summary of any prior history. Through this process, the department is able to ensure that administrative fees are properly included in the court orders.

For non-felony or misdemeanor cases, presentencing reports are not required. As such, details of these cases are not provided to the department until the court orders are submitted for pursuing collections. Due to the limited quantity of cases received, the department does believe it is cost-effective to pursue claim because of the additional court steps required.

cc: Greg Brummels, State Controller Office

----- Forwarded by Daniel Lee/ADPROB/SFGOV on 12/10/03 04:13 PM -----

Daniel Lee
12/09/03 03:32 PM
Ray
Ngo/ADPROB/SFGOV@SFGOV,
Tan/ADPROB/SFGOV@SFGOV,
Fines and Fees

To: grbrummels@sco.ca.gov
cc: Rick Barrett/ADPROB/SFGOV@SFGOV,
Filio/ADPROB/SFGOV@SFGOV, Alice
Melinda Reyes/ADPROB/SFGOV@SFGOV, Holly
Sutter/ADPROB/SFGOV@SFGOV, Rose
Peter Turdici/ADPROB/SFGOV@SFGOV, Hanifa
Munir/ADPROB/SFGOV@SFGOV
Subject: Draft Audit Report - Restitution
for City and County of San Francisco

Hi Greg,

Below please find our response to the draft audit report.

(See attached file: scoaudit.DOT)

If you have any questions, please feel free to call me at 415- 553-1906.

Thanks

Daniel Lee
Finance Manager
Adult Probation Dept

**Attachment B—
Court's Response
to Draft Audit Report**



Superior Court of California County of San Francisco

GORDON PARK-LI
CHIEF EXECUTIVE OFFICER

December 2, 2003

Mr. Jerry McClain
Chief, Special Audits Bureau
State Controller's Office, Division of Audits
PO Box 942850
Sacramento, CA 94250-5874

RE: Audit on the Collection of Restitution Fines and Court-Ordered Restitution

Dear Mr. McClain:

The Court acknowledges receipt of the draft audit report on the collection of restitution fines and court-ordered restitution. On behalf of the Superior Court of California, County of San Francisco, I thank you for the opportunity to respond to this report and its findings and recommendations.

The Court concurs with the findings and conclusions contained in the report, and will assist the City and County of San Francisco, to the extent possible, in implementing the report's recommendations.

The Court does note the following:

- The Court does have existing procedures in place to instruct the County's Adult Probation Department to collect both restitution fines and orders. Nevertheless, the Court will remind bench officers and courtroom staff of the need to ensure those orders are clear and prescriptive.
- The Court's existing sentencing orders generally include an instruction to the Adult Probation Department to collect the 10% administration fee, if applicable. However, it is the Court's understanding that an enabling resolution to implement this fee has never been enacted by the County Board of Supervisors.

Mr. Jerry McClain
Chief, Special Audits Bureau
State Controller's Office, Division of Audits
December 2, 2003
Page Two

If the Court can be of further assistance in this audit report, please contact Sally Pina, our Research and Planning Director, at 415-551-5957.

Sincerely,



Gordon Park-Li
Chief Executive Officer

cc: Edward Harrington, Auditor-Controller, City of San Francisco
Presiding Judge Donna Hitchens
Neal Taniguchi, Chief Fiscal Officer
Sally Pina, Director, Research and Planning

**State Controller's Office
Division of Audits
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